



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2021-0662; FRL-9465-02-R3]

#### **Air Plan Approval; Maryland; Nonattainment New Source Review Requirements for 2015**

#### **8-Hour Ozone National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. The revision certifies that Maryland's existing nonattainment new source review (NNSR) program, covering the Baltimore nonattainment area, the Philadelphia-Wilmington-Atlantic City nonattainment area, and the Washington, DC nonattainment area for the 2015 8-hour ozone national ambient air quality standards (NAAQS), is at least as stringent as applicable Federal requirements. EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0662. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional

availability information.

**FOR FURTHER INFORMATION CONTACT:** Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2339. Mr. He can also be reached via electronic mail at [He.Yongtian@epa.gov](mailto:He.Yongtian@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 7, 2022 (87 FR 12631), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of Maryland's SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Baltimore, MD, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE, and Washington, DC-MD-VA nonattainment areas. The formal SIP revision (#20-05) was submitted by Maryland on June 3, 2020.

In the SIP revision, MDE is certifying that its existing NNSR program, covering the Baltimore nonattainment area (which includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Maryland portion of Philadelphia-Wilmington-Atlantic City nonattainment area (which includes Cecil County in Maryland), and the Maryland portion of the Washington, DC nonattainment area (which includes Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties in Maryland) for the 2015 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors.

On October 1, 2015 (effective December 28, 2015), EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Baltimore nonattainment area, the Philadelphia-Wilmington-Atlantic City nonattainment area, and the Washington, DC-MD-VA

area were classified as marginal nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018 (effective August 3, 2018) using 2014-2016 ambient air quality data. See 83 FR 25776 (June 4, 2018).

On December 6, 2018, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. Areas that were designated as marginal ozone nonattainment areas are required to attain the 2015 8-hour ozone NAAQS no later than August 3, 2021. See 83 FR 10376 (March 9, 2018) and 83 FR 62998 (December 6, 2018). On April 13, 2022, EPA proposed to determine that the Baltimore and Philadelphia nonattainment areas had not timely attained the 2015 ozone NAAQS. See 87 FR 21842. EPA has not yet taken final action on that proposal.

## **II. Summary of SIP Revision and EPA Analysis**

This rule is specific to Maryland's NNSR requirements for the Baltimore nonattainment area, the Philadelphia-Wilmington-Atlantic City nonattainment area, and the Washington, DC-MD-VA nonattainment area. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the ozone NAAQS are located in 40 CFR 51.160 through 51.165. The SIP Requirements Rule explained that, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the effective date of area designations for the 2015 8-hour ozone standard (i.e., August 3, 2021).

The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are set forth in 40 CFR 51.165. See 40 CFR 51.1114. For the 2015 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. See 40 CFR 51.165(a)(12).

Maryland's longstanding SIP approved NNSR program, established in Code of Maryland Regulations (COMAR) Air Quality Rule COMAR 26.11.17 – Nonattainment Provisions for Major New Sources and Major Modifications, applies to the construction and modification of major stationary sources in nonattainment areas. COMAR 26.11.17 currently includes provisions allowing ozone interprecursor trading. On January 31, 2020, MDE submitted a SIP revision (#20-02) to incorporate the interprecursor trading provisions of COMAR 26.11.17 into the Maryland SIP. On October 27, 2020, EPA published a notice of proposed rulemaking (NPRM) in which EPA proposed to approve Maryland SIP revision #20-02). See 85 FR 68029 (October 27, 2020). MDE's SIP Revision #20-05 submission to EPA referenced those interprecursor trading provisions of COMAR 26.11.17 in its certification that Maryland's NNSR program was consistent with Federal requirements. Subsequently, on January 29, 2021, the United States Court of Appeals for the D.C. Circuit concluded that ozone interprecursor trading is not permissible under the CAA and vacated ozone interprecursor trading, i.e., the interprecursor trading provision in the Federal NNSR regulations. See *Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). EPA subsequently removed the language allowing interprecursor trading for ozone from our NNSR regulations. See 86 FR 37918 (July 19, 2021). After the court decision and EPA's withdrawal of the interprecursor trading provisions, by letter dated October 26, 2021, Maryland withdrew SIP revision #20-02 with the interprecursor trading provisions in its entirety. Additionally, in a separate clarification letter dated October 26, 2021, MDE requested that EPA withdraw from EPA's consideration those portions of SIP revision #20-05 which related to ozone interprecursor trading. Consequently, the proposed rule on interprecursor trading that was published on October 27, 2020 (85 FR 68029) was withdrawn on March 7, 2022. See 87 FR 12631.

Other specific requirements of 40 CFR 51.1114, the requirements of CAA sections 110 and 172, the minimum SIP requirements of 40 CFR 51.165, and the rationale for EPA's proposed action are explained in the NPRM, and will not be restated here. No public comments

were received on the NPRM.

### **III. Final Action**

EPA is approving Maryland's June 3, 2020's SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Baltimore, MD, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE, and Washington, DC-MD-VA nonattainment areas as a revision to the Maryland SIP. EPA has concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165.

### **IV. Statutory and Executive Order Reviews**

#### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5

U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland's 2015 8-hour Ozone NAAQS Certification SIP revision for NNSR may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,  
Regional Administrator,  
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart V—Maryland**

2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for “2015 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements” at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

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(e)\* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *		
2015 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements	The Baltimore Area (includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Philadelphia-Wilmington-Atlantic City Area (includes Cecil County in Maryland), and the Washington, DC Area (includes Calvert, Charles,	6/3/2020	<u>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</u>	



<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
	Frederick, Montgomery, and Prince Georges Counties in Maryland)			

[FR Doc. 2022-12255 Filed: 6/9/2022 8:45 am; Publication Date: 6/10/2022]